

Act on the Limitation of Liability for Damages of Specified Telecommunications Service Providers and the Right to Demand Disclosure of Identification Information of the Sender

(Act No. 137 of November 30, 2001)

(Purpose)

Article 1 The purpose of this Act is to set forth the limitation of liability for damages of specified telecommunications service providers and the right to demand disclosure of identification information of the sender, when the rights of others are violated through distribution of information by specified telecommunications.

(Definitions)

Article 2 In this Act, the meanings of the terms set forth in the following items are as prescribed respectively in those items:

- (i) the term "specified telecommunications" means sending telecommunications aimed at reception by unspecified persons (meaning telecommunications as defined in Article 2, item (i) of the Telecommunications Business Act (Law No. 86 of 1984); hereinafter the same applies in this item) (excluding sending telecommunications aimed at direct reception by the public);
- (ii) the term "specified telecommunications facilities" means telecommunications facilities (meaning telecommunications facilities as defined in Article 2, item (ii) of the Telecommunications Business Act) which are used for specified telecommunications;
- (iii) the term "specified telecommunications service provider" means a person that uses specified telecommunications facilities to serve as a medium for other people's communication, or that provides specified telecommunications facilities used for other people's communication;
- (iv) the term "sender" means a person that records information in a recording medium of specified telecommunications facilities used by a specified telecommunications service provider (limited to cases in which the information recorded in the recording medium is transmitted to unspecified persons), or a person who has input information into a transmission device of specified telecommunications facilities (limited to cases in which the information input into the transmission device is transmitted to unspecified persons).

(Limitation of Liability for Damages)

Article 3 (1) If the right of others is violated through distribution of information by specified telecommunications, the specified telecommunications service provider that uses specified telecommunications facilities used for specified telecommunications (hereinafter referred to as the "related service provider" in this paragraph) will not be liable for compensating damages incurred from the violation, unless it is technically possible to take measures for preventing the information from being transmitted to unspecified persons and the violation falls under any of the following items; provided, however, that this does not apply if the related service provider is the sender of information violating the rights of others:

- (i) if the related service provider knew that the violation of the rights of others was due to distribution of information by specified telecommunications;
- (ii) if the related service provider had knowledge of the distribution of information by the specified telecommunications, and there are adequate grounds to believe that the related service provider was aware of the fact that the violation of the rights of others was due to the distribution of information by specified telecommunications.

(2) If a specified telecommunications service provider has taken measures to prevent the transmission of information by specified telecommunications, the specified telecommunications service provider will not be liable for any damages incurred by the sender of the information whose transmission was prevented by the measures, so far as those measures have been taken to the extent necessary for preventing transmission of the information to unspecified persons and those measures fall under any of the following items:

- (i) if there were adequate grounds for the specified telecommunications service provider to believe that the rights of others were violated without due cause through the distribution of information by the specified telecommunications;
- (ii) if a person alleging that their rights were violated through distribution of information by specified telecommunications filed a petition that the specified telecommunications service provider should take measures to prevent the information that violates the rights of that person (hereinafter referred to as "violating information") from being transmitted (hereinafter referred to as "transmission prevention measures" in this item), by indicating the violating information, the allegedly violated rights, and the reason for that person to allege that their rights have been violated (hereinafter referred to as "violating information, etc." in this item) and if the specified telecommunications service provider provided that violating information, etc. to the sender of violating information and inquired the sender whether the sender consents to taking the transmission prevention measures, and the specified telecommunications service provider has not received any notice from the sender that they do not consent to taking the transmission

prevention measures after seven days have passed from the day the sender has received the inquiry.

(Special Provisions for Candidates for Public Office)

Article 3-2 Beyond what is provided for in paragraph 2 of the preceding Article, if a specified telecommunications service provider has taken measures to prevent transmission of information by specified telecommunications (limited to information on documents and drawings distributed during an election campaign period; hereinafter the same applies in this Article), the specified telecommunications service provider will not be liable for any damages incurred by the sender of the information whose transmission was prevented by the measures, so far as those measures have been taken to the extent necessary for preventing transmission of that information to unspecified persons and fall under any of the following items:

(i) if a candidate, etc. for public office (meaning a candidate for public office, or political parties or other political organizations that have filed a candidate application pursuant to the provisions of Article 86, paragraph 1 or paragraph 8 of the Public Offices Election Act (Act No. 100 of 1950)), a party, etc. that have filed lists of candidates for the House of Representatives (meaning political parties or other political organizations that have made a notification under the provisions of Article 86-2, paragraph 1 of the same Act), or a party, etc. that have filed lists of candidates for the House of Councillors (meaning political parties or other political organizations that have made a notification under the provisions of Article 86-3, paragraph 1 of the same Act; the same applies hereinafter) alleging that their honor was infringed by information distributed by specified telecommunications, which was information related to documents and drawings used for election campaigns or that used for activities to prevent the candidate, etc. from being elected (hereinafter referred to as "specific documents and drawings") files a petition that the specified telecommunications service provider take measures to prevent the information infringing the honor of the candidate, etc. (hereinafter referred to as "honor-infringing information") from being transmitted (hereinafter in this item referred to as "measures for preventing transmission of honor-infringing information") by indicating the fact that honor was infringed, the reason for alleging that the honor of candidates, etc. has been infringed, and the fact that the honor-infringing information are related to the specific documents and drawings (hereinafter referred to as "honor-infringing information, etc.") and where the specified telecommunications service provider provided that honor-infringing information etc. to the sender of the honor-infringing information and inquired whether it consents to taking measures for preventing transmission

of honor-infringing information, and the specified telecommunications service provider has not received any notice from the sender indicating that they do not consent to taking the measures for preventing transmission of honor-infringing information after two days have passed from the day the sender has received the inquiry;

- (ii) if a candidate, etc. for public office alleging that their honor was infringed by the distribution of information by specified telecommunications, which was information related to specific documents and drawings, by indicating the honor-infringing information etc. and the fact that the electronic mail address etc. (meaning the electronic mail address etc. specified in Article 142-3, paragraph 3 of the Public Offices Election Act; the same applies hereinafter) of the sender of the honor-infringing information is not displayed in violation of the same paragraph or Article 142-5, paragraph 1 of the same Act, and have requested the specified telecommunications service provider to take measures for preventing transmission of honor-infringing information, but the electronic mail address etc. of the sender of the honor-infringing information is not displayed correctly on the screen of the communications terminal equipment (including input-output devices) used by the person receiving the specified telecommunications related to the information.

(Demand for Disclosure of Identification Information of the Sender)

Article 4 (1) A person alleging that their rights were violated by distribution of information by specified telecommunications, limited to the cases that fall under all of the following items, may demand a specified telecommunications service provider that uses specified telecommunications facilities used for the specified telecommunications (hereinafter referred to as a "provider of disclosure-related services") to disclose identification information of the sender pertaining to the violation of the rights (meaning information such as name and address and other information that contributes to identifying the sender of the violating information, and which is specified by Order of the Ministry of Internal Affairs and Communications; the same applies hereinafter) possessed by the provider of disclosure-related services:

- (i) if it is obvious that the rights of a person demanding the disclosure have been violated by the distribution of the violating information;
 - (ii) if the identification information of the sender is necessary for the person demanding the disclosure to exercise their right to claim compensation for damages or if there are legitimate grounds for the person in question to receive disclosure of the identification information of the sender.
- (2) If the provider of disclosure-related services receives a demand as prescribed in the preceding paragraph, the provider must hear the opinion of the sender of

the violating information pertaining to the demand for disclosure on whether the sender consents to the disclosure of their identification information, except where the provider is unable to contact the sender or where there are any other special circumstances.

- (3) A person to whom the identification information of the sender has been disclosed as prescribed in the provisions of paragraph (1) must not use the identification information of the sender without permission, and commit an act that wrongfully damages the dignity or disturbs the peaceful life of the sender.
- (4) The provider of disclosure-related services will not be liable for any damage incurred by the person who demanded the disclosure prescribed in the provisions of paragraph (1) due to the provider's refusal of that demand, unless the damage was due to intentional act or gross negligence on the part of the provider; provided, however, that this does not apply if the provider of disclosure-related services is the sender of the violating information pertaining to the demand for disclosure.

Supplementary Provisions

This Act is to come into effect as of the date specified by Cabinet Order within six months from the date of promulgation.